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Date:
January 26, 2021

Taxpayer =
Parent =

Dear :

This letter responds to Taxpayer's request for a letter ruling that the payment of certain investment advisory fees from an annuity contract will not be treated as an amount received by the owner of that annuity contract for purposes of section 72(e) of the Internal Revenue Code.

FACTS

Taxpayer is a life insurance company within the meaning of section 816(a). Taxpayer is a subsidiary of Parent and joins in the filing of consolidated returns with Parent. Taxpayer intends to offer three types of non-qualified deferred annuity contracts (the "Adviser Contracts"). Each Adviser Contract will be issued to and owned by an individual or issued to and owned by "a trust or other entity as an agent for a natural person" within the meaning of section 72(u)(1) (the "Owner").

Each Adviser Contract is an annuity contract under the law of the jurisdiction where issued. Each Adviser Contract qualifies for treatment as an annuity contract for federal income tax purposes, including by complying with the requirements of section 72(s). Each Adviser Contract is comprised of an accumulation phase and a payout phase. During the accumulation phase, the cash value of an Adviser Contract is credited with earnings or interest based on options the Owner selects from a menu provided by Taxpayer (the "Options"). The types of Options available under an Adviser Contract

differ depending on whether the contract is a Variable Adviser Contract, a Fixed-Indexed Adviser Contract, or a Hybrid Adviser Contract, as described below.

Variable Adviser Contracts are variable annuity contracts within the meaning of section 817(d). A Variable Adviser Contract's cash value fluctuates up or down with the actual investment performance and market value of the separate account assets corresponding to the selected Options. A Variable Adviser Contract also may offer a fixed account Option or one or more declared rate Options. A fixed account Option provides a guaranteed minimum interest crediting rate plus the potential opportunity for additional interest credits at Taxpayer's discretion. A declared rate Option credits interest based on an interest rate that is set by Taxpayer in advance of each crediting period, subject to a guaranteed minimum rate set in accordance with state standard nonforfeiture law. The Variable Adviser Contracts will be registered as securities with the Securities and Exchange Commission ("SEC").

Fixed-Indexed Adviser Contracts are not variable contracts within the meaning of section 817(d) and do not provide benefits that vary with the performance of separate account assets. Rather, the Options under a Fixed-Indexed Adviser Contract are declared rate and index-based interest crediting strategies that are supported by the Taxpayer's general account. The cash value of a Fixed-Indexed Adviser Contract is credited with interest in accordance with formulas reflected in those Options. A declared rate Option credits interest based on an interest rate that is set by Taxpayer in advance of each crediting period, subject to a guaranteed minimum rate set in accordance with state standard nonforfeiture law. The indexed-based Options credit interest based on the positive performance of one or more specified market indexes over each crediting period, subject to a cap, participation rate, spread, or other limit. While negative performance of the index over the crediting period may mean that the Fixed-Indexed Adviser Contract is not credited with any interest for that period, the negative performance of the index does not reduce the Fixed-Indexed Adviser Contract's cash value. In addition, under state standard nonforfeiture law, a Fixed-Indexed Adviser Contract provides a guaranteed minimum surrender value for the contract as a whole, calculated using a specified percentage of the purchase payment(s) and a guaranteed minimum interest rate.

Hybrid Adviser Contracts are not variable contracts within the meaning of section 817(d) and do not provide benefits that vary with the performance of separate account assets. Rather, the Options under a Hybrid Adviser Contract are declared rate and index-based crediting strategies that are supported by Taxpayer's general account and certain hedging instruments held in a non-unitized separate account. The cash value of a Hybrid Adviser Contract is credited with interest in accordance with formulas reflected in those Options. The declared rate Option credits interest based on an interest rate that is set by Taxpayer in advance of each crediting period, subject to a guaranteed minimum rate set in accordance with state standard nonforfeiture law. The index-based Options credit interest based on the positive or negative performance of a specified market index over each crediting period, subject to a cap, floor, participation rate, buffer,

or other limit, and the results are not dependent on the performance of the separate account. The Hybrid Adviser Contracts will be registered as securities with the SEC.

The Adviser Contracts are designed for an Owner who will receive ongoing investment advice from an investment adviser (the "Adviser") on how to allocate an Adviser Contract's cash value (within the meaning of section 72(e)(3)(A)(i)) among the available Options. The Adviser is expected to take into account factors such as (1) the Owner's personal risk tolerance and investment timeline, (2) the interest rate and market environment, (3) the menu of Options available under the Adviser Contract, and (4) the various other benefits and features available under the Adviser Contract. The Adviser will be licensed to provide investment advice in accordance with all applicable laws and regulations. The Adviser and the firm he or she is associated with (if any) may or may not be affiliated with Taxpayer.

In consideration for the Adviser's investment advice, the Owner will authorize investment advisory fees (the "Fees") to be paid periodically to the Adviser from the Adviser Contract's cash value in a separate agreement between the Owner and Taxpayer (the "Authorization"). The Fees will be determined based on an arms-length transaction between the Owner and the Adviser, or, if the Owner and the Adviser are related parties, the Fees will not exceed those the Adviser charges to unrelated parties. The Fees will not exceed an amount equal to an annual rate of 1.5% of the Adviser Contract's cash value (within the meaning of section 72(e)(3)(A)(i)), determined at the time and in the manner provided in the Authorization or other written agreement with the Adviser but in all events based on such cash value during the period to which the Fees relate. The Fees will compensate the Adviser only for investment advice that the Adviser provides to the Owner with respect to the Adviser Contract, and not for any other services. The Fees will not result in any reduction in fees related to any other asset or for any other service.

Taxpayer will pay the Fees directly to the Adviser. During any period for which the Authorization is in effect, the Adviser Contract will be solely liable for paying the Fees, and the Fees will not be paid directly by the Owner. Similarly, the Owner will not have the right to direct payment of the Fees for any other purpose or to any other person. The Adviser will not receive a commission for the sale of the Adviser Contract from Taxpayer, but in some cases Taxpayer may pay the Adviser a wholesaling fee or marketing allowance.

REQUESTED RULING

Taxpayer requests a ruling that the Fees Taxpayer deducts from the Adviser Contract's cash value and remits to the Adviser will not be treated as an "amount received" by the Owner of the Adviser Contract for purposes of section 72(e).

LAW AND ANALYSIS

Law

Section 72 distinguishes between an "amount received as an annuity" under an annuity, endowment, or life insurance contract and an "amount not received as an annuity" under those contracts. Section 1.72-1(b) of the Income Tax Regulations provides that "amounts received as an annuity" are amounts which are payable at regular intervals over a period of more than one full year from the date on which they are deemed to begin, provided the total of the amounts so payable or the period for which they are to be paid can be determined as of that date. See § 1.72-2(b)(2) and (3). Any other amounts to which the provisions of section 72 apply are considered to be "amounts not received as an annuity."

Section 1.72-2(b)(2) of the Regulations provides that amounts are considered "amounts received as an annuity" only in the event that the following tests are met:

> (i) They must be received on or after the "annuity starting date" as that term is defined in §1.72-4(b) of the Regulations (the first day of the first period for which an amount is received as an annuity);
>
> (ii) They must be payable in periodic installments at regular intervals (whether annually, semiannually, quarterly, monthly, weekly, or otherwise) over a period of more than one full year from the annuity starting date; and
>
> (iii) Except as indicated in §1.72-2(b)(3) of the Regulations (relating to variable contracts), the total of the amounts payable must be determinable at the annuity starting date either directly from the terms of the contract or indirectly by the use of either mortality tables or compound interest computations, or both, in conjunction with such terms and in accordance with sound actuarial theory.

Section 1.72-11(a)(1) of the Regulations describes "amounts not received as an annuity" as any amount received under an annuity contract if the amount:

> (i) does not meet the requirements set forth in §1.72-2(b) of the Regulations for amounts received as an annuity;
>
> (ii) meets the requirements of §1.72-2(b) of the Regulations for amounts received as an annuity but the annuity payments received differ in either amount, duration, or both, from those originally provided under the contract; or
>
> (iii) meets the requirements of §1.72-2(b) of the Regulations for amounts received as an annuity but the annuity payments are received by a beneficiary

after the death of an annuitant (or annuitants) in full discharge of the obligation under the contract and solely because of a guarantee.

Section 72(e) applies to any "amount not received as an annuity" under an annuity, endowment, or life insurance contract. Section 72(e)(2)(A) provides that if any amount which is not received as an annuity is received on or after the annuity starting date, it is included in gross income. Section 72(e)(2)(B) provides that if any amount which is not received as an annuity is received before the annuity starting date, it is included in gross income to the extent allocable to income on the contract and is not included in gross income to the extent allocable to the investment in the contract.

Analysis

In this case, the Fees are integral to the operation of the Adviser Contract. During any period for which the Authorization is in effect, the Owner will receive ongoing investment advice from the Adviser with respect to the Adviser Contract so that the Owner may properly utilize the Adviser Contract. The Adviser is expected to help the Owner select Options related to the Adviser Contract. Taxpayer has represented that the Fees will not serve as consideration for anything other than investment advice provided by the Adviser in relation to the Adviser Contract. Furthermore, Taxpayer has represented that the Fees will not exceed an annual rate of 1.5% of the Adviser Contract's cash value based on the period to which the Fees relate. Based on Taxpayer's representations, the Fees will only be used to pay for investment advisory services relating to the Adviser Contract. Because the Adviser Contracts are designed to work with an Adviser, the Adviser Contract is solely liable for the Fees. The Fees do not constitute compensation to the Adviser for services related to any assets of the Owner other than the Adviser Contract or any services other than investment advice services with respect to the Adviser Contract. Therefore, the Fees are an expense of the Adviser Contract, not a distribution to the Owner.

RULING

The Fees that Taxpayer deducts from the Adviser Contract's cash value and remits to the Adviser will not be treated as an "amount received" by the Owner of the Adviser Contract for purposes of section 72(e).

CAVEATS

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

The ruling contained in this letter does not apply to any amount paid by Taxpayer that compensates the Adviser for services related to assets other than the Adviser Contract or for any services provided other than investment advice services with respect to the Adviser Contract. Any such amount would be an "amount received" by the Owner of the Adviser Contract for purposes of section 72(e).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the proposed transaction under any other provision of the Internal Revenue or Regulations.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Taxpayer must attach a copy of this letter ruling to any tax return to which it is relevant.

In accordance with a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representatives.

Sincerely,

Rebecca L. Baxter
Senior Technician Reviewer, Branch 4
(Financial Institutions & Products)

cc: